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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re T.J., a Person Coming Under the Juvenile
Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

D.J.,

Defendant and Appellant.

F078740

(Super. Ct. No. JD138699-00)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Cynthia L. Loo,
Commissioner.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

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* Before Smith, Acting P.J., Snauffer, J. and DeSantos, J.

Appellant D.J. (mother) is the teenage mother of minor T.J. (born in March 2018), the subject of this appeal. In January 2019, the juvenile court terminated mother's parental rights (Welf. & Inst. Code, § 366.26)¹ and she filed a notice of appeal. After reviewing the juvenile court record, mother's court-appointed attorney informed this court she could find no arguable issues to raise on mother's behalf. This court granted mother leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*)) Mother filed a letter but failed to make the requisite showing. Consequently, we dismiss the appeal.

PROCEDURAL AND FACTUAL SUMMARY

On June 15, 2018, the Kern County Department of Human Services (department) took then two-month-old T.J. into protective custody after mother left her at a group home where she and mother were living. Mother returned approximately six hours later with an older man, asking for her belongings. She was told T.J. was in the department's custody and left.

The department placed T.J. in emergency foster care and filed a petition on her behalf pursuant to section 300, alleging mother's untreated mental illness placed T.J. at a substantial risk of harm. (§ 300, subd. (b).) Mother was diagnosed with borderline personality disorder and bipolar depression but refused to take her medication. She was a ward of the juvenile court and on juvenile probation for assaulting a teacher in 2016. She also had more recent assault charges for assaulting staff at the group home and at the juvenile hall. On May 14, 2018, she informed the group home staff she was hearing voices telling her to harm T.J. On June 2, she stated she wanted to throw the child. On June 5, she threatened a teacher with bodily injury which resulted in her expulsion. On June 14, she threw rocks at a group home staff member's vehicle, causing the windshield

¹ Statutory references are to the Welfare and Institutions Code.

to break. The petition also alleged mother left T.J. without any provision for support because she ran away from a group counseling session on June 15, leaving T.J. behind. (§ 300, subd. (g).)

The juvenile court appointed counsel for mother at the detention hearing on June 19, 2018, and ordered T.J. detained pursuant to the original petition. (§ 300.) The court ordered supervised visits for mother. On June 21, 2018, the court issued a warrant for mother's arrest and on July 2, the department placed T.J. in a prospective adoptive home.

At the time of the dispositional hearing on September 14, 2018, mother was on a runaway status. The juvenile court adjudged T.J. a dependent child under section 300, subdivisions (b) and (g) and found the whereabouts of mother and T.J.'s alleged father were unknown and reasonable efforts to locate them were unsuccessful. The court denied mother reunification services under section 361.5, subdivision (b)(1), finding clear and convincing evidence her whereabouts were unknown as evidenced by an affidavit of a diligent search. The court also denied her reunification services under section 361.5, subdivision (b)(9) based on clear and convincing evidence T.J. was a child described by section 300, subdivision (g), mother willfully abandoned her, and the abandonment constituted a serious danger to her. The court denied the alleged father reunification services because he had not established his paternity and set a section 366.26 hearing.

On September 24, 2018, mother was taken into custody on a warrant issued by the juvenile court. She was admitted to Bakersfield Behavioral Healthcare Hospital on October 7 and released to juvenile hall on October 22.

On January 14, 2019, on the date set for the section 366.26 hearing, the juvenile court appointed a guardian ad litem for mother and continued the hearing.

In its report for the section 366.26 hearing, the department recommended the juvenile court terminate mother's parental rights and free T.J. to be adopted by her prospective adoptive parents. T.J. had been found to be adoptable because of her young

age and lack of any significant medical problems or developmental delays. In addition, she was bonded to her adoptive parents and they wanted to adopt her. Mother had only two visits with T.J., on November 17 and December 15, 2018. Although there were no major concerns observed at the visits, mother did not have a significant relationship with T.J. Therefore, in the department's opinion, it would not be detrimental to T.J. to terminate mother's parental rights.

Mother appeared at the continued section 366.26 hearing on January 29, 2019, with her attorney and guardian ad litem. Her attorney objected to termination of mother's parental rights, arguing there was a sufficient bond between her and T.J. to warrant preserving her parental rights. She pointed to mother's positive interaction during visitation in which she tried to calm T.J. by rocking her and talking to her and attempted to distract her with age-appropriate toys and by reading to her. Mother also held T.J. closely and told her she loved and missed her. Mother's attorney also argued the department failed to provide mother reasonable visitation. She pointed out that mother was available for visits after September 24, 2018, but the department did not arrange visits until November. Even though mother was not available for visits for a period of time in October, when she was in the behavioral health hospital, the department could have arranged visits for her before and after her stay there. Mother's attorney also argued the department should have filed a section 388 petition to modify the court's denial of services once her whereabouts were discovered. Minor's counsel argued any challenge to the reasonableness of services was irrelevant at that stage of the proceedings. County counsel concurred.

The juvenile court terminated mother's parental rights but not before observing that mother loved T.J. and was very responsive to her. The court stated, "The visitation that you did have with the child was very touching and sweet. And the court can tell that you are really responsive to your baby. And that was really precious." However, the

court could not find that the relationship mother had with T.J. outweighed the benefit to T.J. of being in a permanent home with adoptive parents.

DISCUSSION

Mother states in her letter that she is in a foster home and doing well. The foster mother is willing to also care for T.J. Mother claims she is going to school and working on getting a work permit. She is no longer on medication. She attempted to contact the department the day after T.J. was taken into protective custody. She was given the social worker's name and attempted to reach her daughter. She was admitted to Bakersfield Behavioral Healthcare because she is a victim of "prison torment." She believes she has changed and "grown so much." Angry outbursts and anxiety attacks are no longer part of her lifestyle. She denies that her whereabouts were unknown on September 14, 2018, claiming she was in the custody of the Kern County juvenile hall. She was unaware that the juvenile court denied her reunification services on that day. In addition to her handwritten letter, mother submitted a marked-up copy of her attorney's *Phoenix H.* letter, indicating where she disagrees with her attorney's summary by highlighting certain statements and commenting in the margins.

We conclude mother has failed to make a good cause showing that an arguable issue exists on this record. Once a juvenile dependency case reaches the point of a section 366.26 hearing, the juvenile court has little choice but to terminate parental rights and free the child for adoption if the child is likely to be adopted. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) An exception may be made if the parent can prove there is a compelling reason for finding that termination would be detrimental to the child under any of the exceptions listed in section 366.26, subdivision (c)(1)(B). Here, the juvenile court considered whether the beneficial parent-child relationship exception to adoption applied and concluded it did not.

The beneficial parent-child relationship exception to adoption applies if termination of parental rights would be detrimental to the child because the parent has

“maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) A parent asserting this exception must show he or she “occupies a parental role in the child’s life, resulting in a significant, positive, emotional attachment between child and parent.” (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

In considering the exception, the juvenile court acknowledged that mother loved T.J. and enjoyed positive interaction with her during visitation but could not find that preserving mother’s parental rights outweighed the benefit T.J. would receive from being raised in an adoptive home. To make a good cause showing an arguable issue exists on this record, mother would have to point to evidence she occupied a parental role for T.J. and that the benefit to T.J. of preserving that relationship outweighed the benefit T.J. would gain from a permanent home through adoption. Mother has not made that showing and would be hard-pressed to do so on evidence she only had two visits with T.J. while the prospective adoptive parents had T.J. in their continuous care for six months.

We conclude the contentions raised in mother’s letter do not establish good cause there are arguable issues requiring supplemental briefing. Further, though we are not required to do so, we have reviewed the pertinent parts of the record and we have found no arguable issues for briefing. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 841–842.) Accordingly, we dismiss the appeal.

DISPOSITION

This appeal is dismissed.